

RECEIVED

FORM FOR USE IN APPLICATION
FOR HABEAS CORPUS UNDER 28 U.S.C. §2254

2001 MAR -2 A 9:53

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Roscoe Louis Holloway

Name

154358

Prison Number

3:07CV186-MEF

Limestone Correctional Facility

Place of Confinement

United States District Middle

District of Alabama

Case No.

(To be supplied by Clerk of U. S. District Court)

Roscoe Louis Holloway, PETITIONER

(Full name) (Include name under which you were convicted)

Billy Mitchem, RESPONDENT

(Name of Warden, Superintendent, Jailer, or authorized person having
custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF

Alabama

, ADDITIONAL RESPONDEENT

(if petitioner is attacking a judgment which imposed a sentence to be served in the future,
petitioner must fill in the name of the state where the judgment was entered. If petitioner has a
sentence to be served in the future under a federal judgment which he wishes to attack, he should file
a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN
STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. The Judicial Conference of the United States has adopted, effective 1/1/83, the 8-1/2 x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8-1/2 x 11 inch paper, otherwise we cannot accept them.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support

your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from judgment of conviction.
- (7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court whose address is
P.O. Box 711, Montgomery, AL 36101
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

*If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.

PETITION

1. Name and location of court which entered the judgment of conviction under attack

Circuit Court OF Randolph County, Wedowee, Alabama

2. Date of judgment of conviction December 12, 2005

3. Length of sentence 15 Years Sentencing Judge Ray D. Martin

4. Nature of offense or offenses for which you were convicted: Robbery Third Degree

5. What was your plea? (check one)

(a) Not guilty

X

(b) Guilty

--

(c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: N/A

6. Kind of trial: (check one)

(a) Jury
 (b) Judge only

7. Did you testify at the trial? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court N/A

(b) Result _____

(c) Date of result _____

If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details:

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of court Circuit Court Randolph County.

(2) Nature of proceeding Rule 32 Postconviction Petition.

(3) Grounds raised Sentence Exceeded Maximum Authorized by law.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result Denied

(6) Date of result June 28, 2006

(b) As to any second petition, application or motion give the same information:

(1) Name of court Court OF Criminal Appeals.

(2) Nature of proceeding Appeal

(3) Grounds raised Whether The Trial Court Was With Out
 Jurisdiction To Render Judgment And Impose Sentence
 Because The Sentence Exceeds The Maximum Authorized By Law

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result Affirmed

(6) Date of result September 22, 2006

(c) As to any third petition, application or motion, give the same information:

(1) Name of court Alabama Supreme Court.(2) Nature of proceeding Petition For Writ Of Certiorari.(3) Grounds raised Whether The Trial Court Was Without Jurisdiction To Render Judgment, And Impose Sentence Because The Sentence Exceeds The Maximum Authorized By Law.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No (5) Result Petition Denied(6) Date of result January 12, 2007

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
(2) Second petition, etc.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
(3) Third petition, etc.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: Have exhausted all of the remedies.

12 State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds in relief in habeas corpus proceeding. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

a.) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with

understanding of the nature of the charge and the consequences of the plea.

- b.) Conviction obtained by use of coerced confession.
- c.) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- d.) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- e.) Conviction obtained by a violation of the privileges against self incrimination.
- f.) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- g.) Conviction obtained by a violation of the protection against double jeopardy.
- h.) Conviction obtained by action of a grand jury or petit jury which was unconstitutionally selected and impaneled.
- i.) Denial of effective assistance of counsel.
- j.) Denial of right of appeal.

A. Ground one: The Sentence Imposed Exceeds The Maximum Authorized By Law, Or Is Otherwise Not Authorized By Law In Violation Of The 6Th, 8Th And 14Th Amendment.

Supporting Facts (tell your story briefly without citing cases or law):

Please See Attachment.

B. Ground two:

Supporting FACTS (tell your story briefly without citing cases or law):

C. Ground three:

Supporting FACTS (tell your story briefly without citing cases or law):

D. Ground four:

Supporting FACTS (tell your story briefly without citing cases or law):

13 If any grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them:

14 Do you have any petition or appeal now pending in the court, either state or federal, as to the judgment under attack? Yes No

15 Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Attorney Oliver Kitchens P.O. Box 486
Roanoke, Alabama 36274

(b) At arraignment and plea **Attorney Oliver Kitchens**

(c) At trial Attorney Oliver Kitchens "Guilty Plea"

(d) At sentencing Attorney Oliver Kitchens.

(e) On appeal N/A

(f) In any post-conviction proceeding Pro-Se

(g) On appeal from any adverse ruling in post-conviction proceeding: Pro-Se

16 Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17 Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future:
N/A

(b) And give date and length of sentence to be served in the future: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes No

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury, that the foregoing is true and correct.

Executed on February 24th 2007

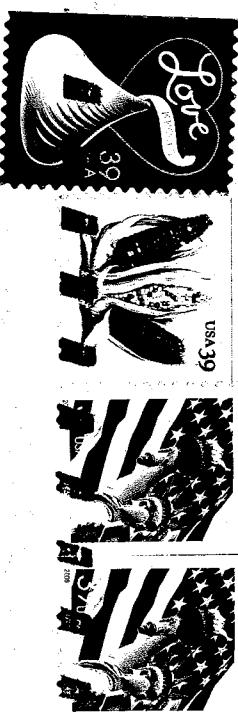
Rosie Louis Holloway
Signature of Petitioner

Attachment for ground # 1

Petitioner is being unlawfully detained in a State penal facility in violation of the 6th, 8th and 14th Amendment of the United States Constitution and Laws on criminal convictions and sentence. Petitioner Holloway pled guilty to the offense of Robbery 3rd degree and was sentenced to 15 years, as said sentence was derived whereas the Petitioner was sentenced under the habitual felony offender act, but the record and agreement are devoid of any notice that this would be a factor in the sentence to be imposed by the court or by any request from the State prosecutor who offered to let Petitioner enter a plea agreement in this case, therefore Petitioner Holloway received an unfair trial which violates his 6th Amendment Right, and violates his 8th Amendment Right to be free from cruel and unusual punishment, and by virtue of the Petitioners entitlement to due process violates his 14th Amendment Right as well as laws encompassed in the Alabama Constitution. Petitioner was never given notice that he was being treated as a habitual offender and is now having to endeavor the penalty which will result in his being detained for a longer period as well as be a determining factor in parole, custody and any placement. The guilty plea that was entered and made by Petitioner was enforced by use of forms and a colloquy that is absent a showing that I was sentenced as a habitual offender, therefore my guilty plea and the courts being satisfied that a factual basis existed to sentence Petitioner to 15 years on a class "C" felony cannot be properly argued by the court where the record will show that the Petitioner's claim is true and correct and is illegal by all standards in the proceeding. Petitioner will not be released until march 26th, 2010, but should only have received a sentence of no more than 10 years, which is followed would require him to be released by December of 2008, if not before and would also create shorter requirements by the Department of Corrections on eligibility status for work release, work camps, custody, etc. The State failed to meet the requirements of Alabama's imposing the habitual felony offender act and was not utilized and assumption and surmise cannot be implemented where an enhancement is at issue. Therefore ~~my~~ detention is unlawful and the violations that attach are ripe for review as they are listed as 6th, 8th and 14th Amendment Rights that are a guarantee in criminal prosecutions.

AL 5# Roscoe Louis Holloway
Limestone C.S.
26779 Nick Davis Road
Harvest, Alabama 35749

28 2007
HUNTSVILLE AL 358
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PM



To: The office of The Clerk
Mrs. Debra P. Hackatt
P.O. Box 711
Montgomery, Alabama 36101